No. 427.

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Office Supreme Court
FILED
OCT 25 1897
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Brf. of Hotchkiss for Appellee (

Filed Oct. 25, 1897.

United States Supreme Court.

HIGHLAND AVENUE AND BELT RAILROAD COMPANY vs. COLUMBIAN EQUIPMENT COMPANY.	427

Brief of Henry D. Hotchkiss, Esq., in opposition to motion to advance.

First.—The motion is premature. The record is not yet printed. Counsel has not even seen a copy of the question certified as it appears of record. He has only heard what the question is.

Second.—It is doubtful whether the cause is properly in this court at all.

Section 6 of the Act of March 3d, 1891, gives to Circuit Courts of Appeal power to certify questions which are "within its *appellate* jurisdiction."

We understand the question certified is, whether the Court in the Fifth Circuit had jurisdiction to hear the appeal of the railroad company herein. Therefore, if the Court had *not* jurisdiction, it could not certify.

The motion to advance really involves an inquiry into the very question certified. We do not understand that this Court will hear or decide *such* questions on such motions. The motion to advance should therefore be denied.

Third.—We find nothing in the rules authorizing this motion to advance.

Rule 32, as amended November 28th, 1892, applies only to "cases brought to this Court by writ of error or appeal under the Act of February 25th, 1889, Chapter 236, or under Section 5 of the Act of March 3d, 1891, Chapter 517" (to wit, by writ or error or appeal).

This cause is here on certification and not by appeal or writ of error.

Fourth.—The case is not within Rule 26. There are no "special or peculiar circumstances," which entitles this railroad company to have its cause heard out of its regular order. The mere fact that a common-law Receiver is in possession of the property, *pendente lite*, is of no weight. If it were, we believe it would furnish an entirely new precedent in this Court.

The motion should be denied.

But should the motion be granted, we ask that the cause be set for a day not less than four (4) weeks after we shall have had an opportunity to obtain a printed copy of the record.

HENRY D. HOTCHKISS,
Of Counsel for Columbian Equipment Company.